



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,199	02/07/2002	Kent J. Lanter	PM-31562	3768
22202	7590	05/20/2004	EXAMINER	
WHYTE HIRSCHBOECK DUDEK S C			SAYALA, CHHAYA D	
555 EAST WELLS STREET			ART UNIT	
SUITE 1900			PAPER NUMBER	
MILWAUKEE, WI 53202			1761	

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AC

Office Action Summary	Application No. 10/072,199	Applicant(s) LANTER ET AL.	
	Examiner C. SAYALA	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 is/are allowed.
- 6) ☒ Claim(s) 1-22 and 24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 4-22 and 24 are rejected under 35 USC 103(a) as being unpatentable over Fajt (US Pat. 5525353) in view of Lanter et al. (US Pat. 6171632) and further in view of LU 87750 and WO 98/47392.

Fajt et al. teach an animal feed that contains 0.5 – 10% alginate gel, proteins, oils, vegetable matter like bran, polishings, etc that naturally contain fiber. See col. 3, lines 15-20; col. 4, lines 37-50. The patent does not teach that the fiber is “neutral detergent” and does not teach a palatability agent. Lanter et al. also teaches animal feed (which would include feed for an ape), with 0.1-12% gelling agent water and oils, fats, antioxidants (see col. 3, lines 45-50; col. 3, lines 5-10). Note col. 4, lines 60-65, which teaches the temperature and times claimed. Col. 5 teaches the molding process in cardboard boxes. The patent does not teach fiber or a palatability agent. The LU patent teaches that the addition of fiber to a gel-containing animal feed was old and known in the art. The addition of a fiber is taught as being beneficial because when it becomes

Art Unit: 1761

embedded in the feed mass, it provides structure strengthening and provides tear resistance. See page 10, last paragraph. At page 8, the last two paragraphs provide guidance as to amounts. Page 10, last paragraph and examples show that the feed composition can be packaged as in the Lanter reference, i.e. without extrusion or pelletization, but by pouring into molds. See claims 1 and 10. Similarly, the WO'392 patent teaches the addition of a taste-providing agent to a gel-containing animal feed. It would have been obvious to add fibrous materials such as those shown by Fajt et al. and indicated by the LU patent to modify the Lanter et al. patent. Also, the addition of a taste-providing agent would have been obvious and advantageous as shown by the '392 patent. Even though the patent of Fajt et al. does not teach that their fiber materials are "neutral detergent", the list provided in the specification at page 7, lines 17-24 indicates that the reference fibers are inclusive to the instant claims.

Response to Amendment

2. Applicant's arguments filed 4/19/04 have been fully considered but they are not persuasive.

Applicant's remarks with respect to the Fajt reference, that the final form of the feed is a pellet, not a gel, and that the gel is simply an intermediate product that is eventually converted to a pellet, is not convincing. There is no limitation in the claims that excludes pelletization or extrusion to a pellet, or any limitation that suggests that pellets are excluded. On the other hand, there is nothing in the

Art Unit: 1761

reference that suggests that the gel when palletized, no longer existed as a gel but was converted to something else in the pellet.

Lanter et al. is criticized for not teaching a fiber. If it did, then this reference would have been applied under 35 USC 102. Fajt and Lanter et al., both are drawn to a gel that containing product for animal diets. That the purpose of Lanter et al. is to introduce protein not fiber, is irrelevant because the purpose of the LU patent for introducing fiber into the feed is motivation enough to make the combination. Note the expanded rejection above that clearly lays out the benefits of adding the fiber as well as the teaching as to its amounts. This has been done so that it is clear to applicant as to the applicability of the reference and to make clear that his analogy to a zoo, rhinoceros, unicorn and horse is entirely misplaced. Furthermore, assertion that examiner combines prior art references for purpose different from that envisioned by inventors does not warrant reversal of examiner's finding of obviousness". *Ex parte Raychem Corp* 17 USPQ2d 1417. It is well established that the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

The rejection of claim 24 is being made because applicant's amendment contains a limitation to "a neutral detergent fiber which includes primate browse biscuits", thus opening the claim to other fibers shown by Fajt. Note that original

Art Unit: 1761

claim 3 recites "the *source* of the neutral detergent added fiber includes primate browse biscuits".

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

Art Unit: 1761

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



C. SAYALA
Primary Examiner
Group 1700.